### C. The Case for UHF/UHF and UHF/VHF Combinations

Commonly owned UHF/UHF and UHF/VHF facilities pose no threat to diversity or competition concerns. Rarely are UHF stations dominant in a market.

#### 1. UHF Stations Are Not the Equivalent of VHF Facilities

As a class, UHF stations simply do not have the signal reach of their VHF counterparts. The technical UHF handicap has been widely documented and acknowledged by the FCC.[46] These technical handicaps have translated directly into economic deficiencies as well.[47] These handicaps exist today. Some have argued that the growth in cable has eliminated the disparity between UHF stations and their VHF counterparts. Precisely the opposite is true.

First, the expansion of cable is closely associated with declines in UHF profitability. As Table 1 indicates, UHF independent stations have had an extraordinarily difficult time during the period of rapid cable expansion. The same analysis is true for UHF affiliates as demonstrated by Table 2.

If carriage by cable systems improved the signal reach of local UHF stations, then one would expect a concomitant rise in the profitability of these stations equalling that of their VHF affiliate counterparts. But this has not occurred. Instead, the data reveal precisely the opposite.

These tables demonstrate that a multi-channel competitor will have a significant "negative" impact on the profitability of local UHF television stations. The competitive impact of multi-channel wire based systems, like cable, is felt primarily at the local level.

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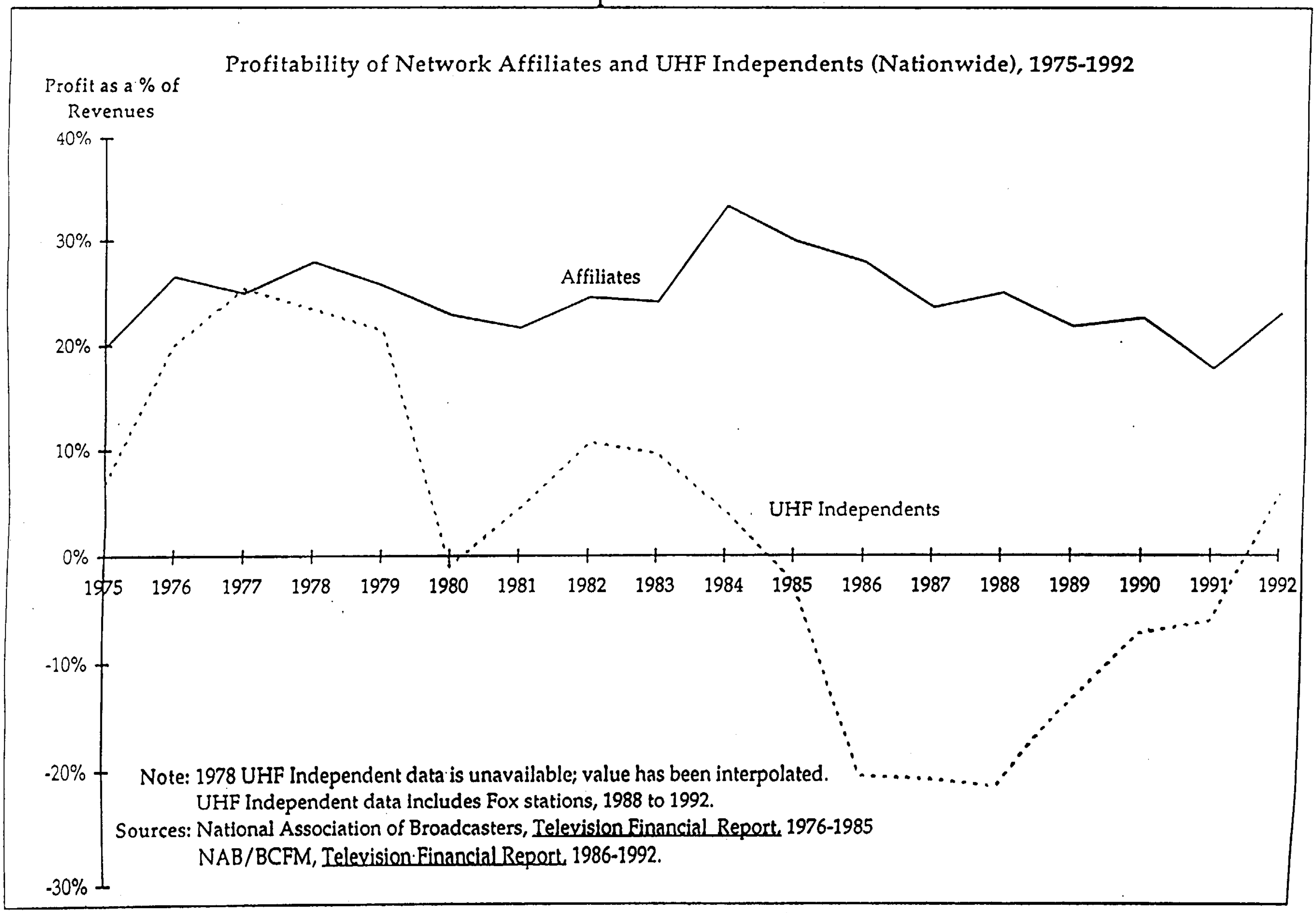
[46]See eg. (Federal Communications Commission: Network Inquiry Special Staff, "New Television Networks: Entry, Jurisdiction, Ownership and Regulation") Vol I. (1980) at 64-77.

[47]*Id.* at 76.

TABLE 1

UHF profitability plummeted during rapid cable growth in the mid 1980's and only returned to positive levels after 1991.



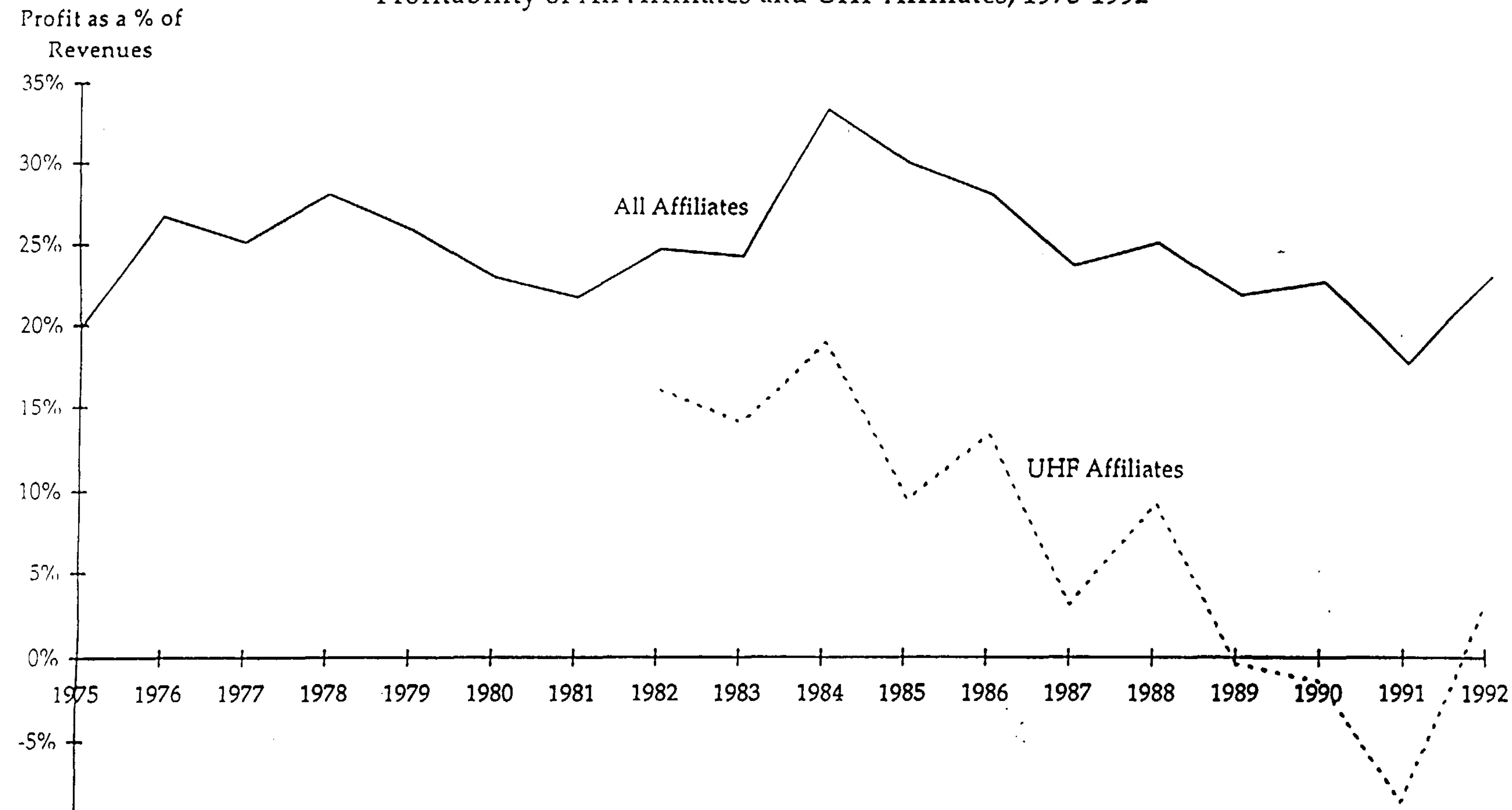

Note: 1978 UHF Independent data is unavailable; value has been interpolated.
UHF Independent data includes Fox stations, 1988 to 1992.

Sources: National Association of Broadcasters, Television Financial Report, 1976-1985
NAB/BCFM, Television Financial Report, 1986-1992.

TABLE 2

## The growth of cable in the 1980's has not reduced the profitability gap between VHF and UHF affiliates, implying a UHF disadvantage remains.

Profitability of All Affiliates and UHF Affiliates, 1975-1992




Note: Insufficient data exist to compare UHF independents with VHF independents, or UHF with VHF affiliates. Thus, UHF affiliates and all affiliates are used. The spread illustrated above is a very conservative estimate of the actual profitability gap. An even wider gap would be evident if UHF affiliates were omitted from the all affiliate data.

Sources: National Association of Broadcasters, Television Financial Report, 1976-1985
NAB/BCFM, Television Financial Report, 1986-1992.

Second, the assumption that cable distribution has eliminated the disparity between UHF and VHF signals presumes that the UHF stations are, in fact, carried on the cable system to the same extent that VHF facilities are carried. As both the Commission and the Congress are acutely aware, UHF stations bore the brunt of cable's anticompetitive carriage policies. Unfortunately, even with the passage of the 1992 Cable Act, carriage of UHF stations by existing cable systems, or future wire-based delivery systems is by no means assured.

Continued carriage of UHF stations by cable systems depends on the final disposition of the must-carry case by the Supreme Court. While we remain confident that the court will sustain these rules, the FCC cannot assume that carriage will be guaranteed in the future. As a result, the anti-competitive incentives to drop television stations from cable systems may resurface.

Even if the must-carry provisions of the 1992 Cable Act are sustained, the carriage rights of UHF stations are not necessarily secured. For years, UHF stations encountered difficulties in obtaining carriage throughout their entire market. In large measure this was due to the FCC's 1972 must-carry rules. These rules required carriage in those communities where a station was significantly viewed. A list of significantly viewed stations was incorporated into the rules containing every station and the communities in which the station was presumptively considered significantly viewed. For VHF stations the significantly viewed lists contained all the communities located in the station's local market as defined by its area of dominant influence (ADI) which generally cover a broad geographic area. At the time, however, many UHF stations were not even on the air and were not included in the list. As a result, UHF station carriage was generally limited to 35 miles.[48]

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[48]This coverage disparity was later engrafted onto the 1976 Copyright Act. As a result, many UHF stations were considered to be "distant" signals in many communities located within the station's ADI. Because cable operators had to pay for the carriage of distant signals, many of the stations were not carried by cable systems located within the station's local ADI market.

In 1992, Congress attempted to eliminate this coverage disparity by granting all local television stations must-carry status throughout their Area of Dominant Influence. The copyright law was not changed, however, and many UHF stations could secure carriage that was comparable to a VHF station (throughout the ADI) only if they were willing to reimburse cable

Unfortunately, passage of the 1992 Cable Act has not translated into equivalent cable coverage with VHF stations. Because of the historical coverage disparity, many UHF stations may still not receive full coverage by cable systems. Under the 1992 Cable Act, a cable system has the ability to file a petition claiming that the cable community is not located in the station's market.[49] One of the elements in this analysis is whether the station has been historically carried by the cable system. With over two decades of discriminatory regulatory treatment, many UHF stations have never been carried in all communities located within their local ADI or DMA markets. Depending on how the Commission resolves these petitions, UHF stations may continue to suffer significant coverage disparity problems. In sum, one cannot assume that the growth of cable systems has significantly attenuated the disparity in signal coverage between UHF and VHF stations.

Finally, despite the presence of cable television, the disparity between VHF and UHF stations is firmly recognized by the marketplace. The recent spate of affiliate switches was caused by Fox's desire to "upgrade" its affiliate base from UHF to VHF facilities.[50] Veronis, Suhler & Associates illustrate the point in the context of starting new networks and analyzing recent affiliate shifts:

> Moreover, most of the available stations are UHF stations, which have a lower reach and a lower audience potential than VHF stations – a problem faced by Fox in a number of markets. The importance of VHF stations was dramatically

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operators for copyright fees. The result was that many UHF stations did not receive carriage coverage comparable to their VHF counterparts.

Last year the 1976 Copyright Act was modified. Pursuant to the new law, stations will be considered to be local signals, throughout their Area of Dominant Influence (ADI) or Designated Market Area (DMA). As a result, after two decades of regulatory disparity, UHF stations will no longer have to confront copyright obstacles to get cable carriage reach similar to their VHF counterparts.

[49]As the FCC's Cable Bureau knows, these petitions have been used as a shield by numerous cable operators to deny UHF stations carriage. While these petitions are pending, cable systems are not required to carry stations that heretofore were not carried by the cable system.

[50]Contrary to the FCC's belief, affiliate switches are not a sign of local stations having increased power over their own networks. The affiliate switches were not initiated by the station's themselves. Rather it started by a network's desire to "upgrade" its affiliate base.

illustrated when News Corporation (Fox's parent company) invested $500 million for a minority nonvoting interest in New World Communications, the owner of a number of VHF affiliates in large markets. In return, New World Communications agreed to switch the network affiliations of 12 stations to Fox, thereby giving Fox a stronger signal, and a stronger station in a number of key markets. **Thus, despite the presence of cable, a strong roster of VHF stations remains vitally important for a broadcast network.**[51]

In sum, there is no factual basis for concluding that cable television has somehow reduced the disparity between UHF and VHF stations. UHF station are still the most vulnerable elements in the television and video marketplace.

### 2. UHF/UHF and UHF/VHF Combinations Will Increase Competition and Enhance Diversity

Permitting local market combinations will insure that free off-air UHF stations remain a viable voice in the marketplace. As Table 3 indicates, significant efficiencies can be gained from co-locating facilities. These figures are actual figures from an INTV member station based on a mid-sized market. The 24% savings associated with common ownership are critical to meeting the competitive challenges from multichannel competitors.

These efficiencies will result in better programming and service to the public. Perhaps the best evidence of this fact comes from existing LMAs.[52] While these arrangements are not able to harness all the efficiencies of commonly owned facilities, they provide some indication of how service will increase if the duopoly rules are relaxed to permit co-located facilities.

In Austin, KNVA had a construction permit that was due to expire because of a lack of capital. It entered into an LMA with KXAN and is now a viable player in the market, providing unique hispanic children's programming, time shifted news and an outlet for the new WB network. In Louisville, Kentucky, WFTE, Channel 58 lacked the financing to survive. An LMA with WDRB brought the station to life making it an attractive investment. Today, WFTE

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[51]*Veronis, Suhler & Associates Communications Industry Forecast; 1994-1998* at 84.

[52]Absent a change in the duopoly rules, INTV does not believe LMAs should be considered as ownership interests. The standards developed by the FCC for LMAs in the radio context were established at the time it relaxed the local radio rules. This avoided significant undue hardship. At the very least, existing LMAs should be grandfathered.

## Annual Expenses

## UHF/ "Independent"

| | Station A Annual Expenses | Station B Annual Expenses | Combination of Stations A & B Annual Expenses | |
|---|---|---|---|---|
| Program Licensee Fees | $2,500,000 | $2,500,000 | $4,500,000 | • Less wastage of unaired program episodes. |
| Production & Operations | $800,000 | $800,000 | $1,000,000 | • Sharing of certain operational expenses including maintenance, engineering and production. |
| Promotion & Advertising | $850,000 | $850,000 | $1,200,000 | • Sharing of internal promotion infrastructure; greater purchasing scale of external media. |
| Selling | $1,325,000 | $1,325,000 | $1,600,000 | • Sharing one salesforce. |
| General & Adminstrative | $800,000 | $800,000 | $1,200,000 | • Sharing of overhead: building, utilities, etc. |
| TOTAL | $6,275,000 | $6,275,000 | $9,500,000 | |

- 24% Efficiency Savings

provides Louisville with live university basketball and football games not carried by cable channels as well as other syndicated programming. WEVU, Channel 26 in Bonita Springs, Florida did not have the resources to establish a news-cast. An LMA with WBBH provided WEVU the opportunity to provide in-depth local news coverage for the first time.[53]

### 3. Reducing Contour Overlaps From Grade "B" to Grade "A" Will Not Help Local Market Efficiencies

Importantly, these savings cannot be realized by simply relaxing the contour overlap standard from Grade B to Grade A. As noted previously, signal standards do not represent the economic reality of the local television marketplace. Simply reducing the contour standard will still require a station to operate separate facilities and in most cases require them to operate in separate television markets. Overhead and other operational costs will have to be duplicated.

### 4. A Case By Case "Failing" Station Test Is Counterproductive

The Commission should, as a general rule, permit UHF stations to combine in local markets. Permitting such combinations only in cases of financial distress on a case-by-case basis is simply bad policy. Such an approach requires a station to be near financial ruin or near bankruptcy before a combination is approved. During this period, service to the community suffers. Also, the new owner will have to spend an inordinate amount of resources simply to bring the station out of the red. This policy unnecessarily drains the resources of the healthy station. Accordingly, a case by case failing station test should be avoided at all costs.

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[53] *See* Testimony of Gary Chapman, president of LIN Television Inc. before the Subcommittee on Telecommunications and Finance, Committee on Commerce, U.S. House of Representatives, May 12, 1995.

## III. NATIONAL OWNERSHIP RULES: THE RULES SHOULD BE RELAXED TO PERMIT GROUP OWNERS TO REACH 35% OF THE NATIONAL AUDIENCE

All of the competition and diversity analysis presented above applies with equal or greater force to the national ownership rules. When viewed at the national level, the shear magnitude of the cable and telephone industry, justifies a change in the national broadcast ownership rules.

**Annual Revenue[54]**
**(billions)**

| | |
|---|---|
| **Local Telephone Companies** | **$100** |
| **Cable Television** | **25** |
| **Broadcast TV** | **25** |

Given the national reach of broadcast television's multichannel competitors, there is no justification for keeping the current national ownership limits at 12 stations and 25% national audience reach. [55] We would recommend an initial increase in the audience reach cap to 35% and additional increases over time.

### A. There Is Fierce Competition At the National Level

None of our multichannel competitors are subject to similar restrictive rules on national reach. Today, cable passes over 96% of US households with subscription rates at approximately 62.5%. There are no national ownership limits on the reach of individual cable networks many of which are owned by large MSO groups like TCI and Time Warner. A single company can own several cable networks, potentially reaching the entire national audience. Table 4 provides just a sampling of the multiple cable channels owned by TCI and Time Warner. Both companies have significant ownership interests in Turner.

[54]Washington Analysis Nat-West, 1995.

[55]It is worth noting that the FCC in 1984, recommended the abolition of the national ownership limits. The existing rule, which limits ownership to 12 stations and 25% of the national audience, was enacted "out of an abundance of caution." *See Multiple Ownership Report and Order*, 100 FCC 2d 17, 1984; *Multiple Ownership Reconsideration Order*, 100 FCC 2d 74, 1985.

# TABLE 4

## Example of Vertical Integration: Cable MSOs & Cable Networks

| Company | Networks | Ownership Share | Subscribers (Millions) |
|---|---|---|---|
| TCI/Liberty Media | American Movie Classics | 50.0 | 48.9 |
| | BET | 18.0 | 39.4 |
| | Court TV | 33.3 | 15.2 |
| | Encore | 90.0 | 4.8 |
| | The Family Channel | 15.6 | 59.3 |
| | Home Shopping Network | 39.5 | 48.3 |
| | QVC | 18.5 | 48.3 |
| | Starz! | 90.0 | 0.5 |
| | X*Press Executive | 100.0 | NA |
| Time Warner | BET | 15.0 | 39.4 |
| | Cinemax | 100.0 | 6.3 |
| | Comedy Central | 50.0 | 30.7 |
| | Court TV | 55.0 | 15.2 |
| | E! Entertainment TV | 50.0 | 27.0 |
| | Home Box Office | 100.0 | 17.4 |
| | QVC | 8.0 | 48.3 |
| | The Sega Channel | 33.0 | — |
| Turner Broadcasting* | Cartoon Channel | 100.0 | 10.9 |
| | CNN | 100.0 | 62.8 |
| | Headline News | 100.0 | 54.3 |
| | TBS | 100.0 | 61.9 |
| | TNT | 100.0 | 61.1 |

* Time Warner owns 19.4% of Turner Broadcasting

SOURCE: VERONIS, SUHLER & ASSOCIATES COMMUNICATIONS INDUSTRY REPORT/CABLE TELEVISION - NOV. 1994

A single multiple system cable operator is permitted under the FCC rules to reach 30% of homes passed on a nationwide basis. In each local market, however, a cable operator has control over 30 - 50 channels. Moreover, in many markets cable occupies the status of a "bottleneck facility." Accordingly, the competitive posture of each multichannel cable system is far greater than a local television station which, even under this legislation, will be limited to two channels of service in each local market.

Telephone company video systems have no national audience reach restrictions. These systems will be providing hundreds of channels in each local market. Also, local telephone companies can develop program services that will be provided to subscribers outside their service area, potentially reaching the entire national audience.

New multichannel competitors are not subject to caps on their national reach. The rapidly expanding direct broadcast satellite service (DBS), which offers 150 channels of video programming, can potentially reach every house in America. It has been estimated that subscribers will exceed one million in 1995 and may exceed ten million by the end of the decade.[56] Wireless cable (MMDS) is not subject to national ownership reach limits. The recent infusion of capital from the telephone companies will make MMDS a formidable competitor.

Relaxing these rules will create a stronger free, off-air television system. Increased group ownership will help broadcasters harness efficiencies. For example, broadcast companies will be able to spread the costs of management, sales and programming personnel over a number of stations.

### B. Relaxing the Rule Will Enhance Competition and Diversity

Modifying these rules will assist broadcasters in program acquisition and development. As group ownership increases, a broadcaster is in a better position to afford top quality programming. Group ownership permits more efficient "one stop" transactions, allowing television station owners to compete with nationally distributed wire-based networks. Moreover,

[56]Cablevision, November 14, 1994 at 6.

increased national ownership provides a solid economic base for the broadcaster to develop and produce its own programming. Group ownership will assist not only in developing entertainment programming, but enhances an owner's ability to produce additional news and public affairs programming.

For example, in the last few years Tribune Broadcasting acquired two UHF stations, one in Philadelphia, another in Boston. Because of Tribune's expertise in operating independent stations and the resources it could harness, both stations' bottom lines moved from red to black. Philadelphia now broadcasts an evening news produced by the Philadelphia Inquirer and its journalists, thereby enhancing public dialogue and information. The prior ownership of Philadelphia stations could not have sustained the costs of these expanded services. Ten years ago Tribune purchased a religious station, WGNX-TV, Channel 46 in Atlanta. Tribune transformed the station into a full service independent. Three years ago, WGNX launched a Ten O'clock Prime Time news, the first in Atlanta. The station became a CBS affiliate last December. This progression would not have occurred unless a major organization with expertise and financing made the long term commitment. INTV believes these acquisitions have been good for the American public.

With respect to diversity, it is simply inconceivable that a broadcast group owner will somehow control the national marketplace of ideas. There are simply too many wire-based nationally distributed programming channels such as CNBC, CNN and C-SPAN. Moreover, group owned stations do not present monolithic views on their owned and operated stations. The fundamental economic truth of broadcasting is that each local station serves the specific interest of its community. Editorial decisions are made at the station level consistent with these local interests. Broadcasters who fail to recognize this fact will not be in business for long. Finally, individuals can receive information from a variety of sources including newspapers, magazines, cable channels, DBS, the internet and soon from telephone company delivery systems.

The competitive pressures from cable systems, telephone video systems and other multichannel subscription based services justifies a significant relaxation in the broadcast national multiple ownership rules. Absent this relaxation, free off-air television will have significant difficulties competing in the video marketplace. The universal broadcast system, which provides news and entertainment to all Americans will become competitively disadvantaged and decline. One way to insure a full diverse compliment of off-air video choices is to relax those rules which prevent television station owners from competing.

### C. The UHF Discount Should Be Retained

The Commission currently attributes UHF stations with only half the audience reach of VHF stations when calculating national ownership reach. This policy should continue. As discussed above, UHF stations suffer from numerous technical and economic handicaps. Their over-the-air audience reach is significantly less than their VHF counterparts. The Grade B radius of a VHF station ranges from 72 miles (VHF Channels 7-13) to 76 miles (VHF Channels 2-6). The radius for UHF stations, channels 14-69 is only 45 miles.[57] In fact, at maximum effective radiated power, UHF station require ten times more electrical power than low numbered VHF stations.[58] There are also additional interference and reception problems. As explained previously, cable carriage has not made UHF stations equal to VHF facilities with respect to economic performance or even signal reach.

Nothing has changed since the FCC enacted the "UHF discount" that would justify elimination of this policy. On the contrary, the "UHF discount" has increased investment in UHF stations, making them stronger competitors in the marketplace. This policy should be continued.

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[57]FCC Network Inquiry Staff, *New Television Networks: Entry, Jurisdiction, Ownership and Regulation*, 1980 at 70-71.

[58]*Id.* at 72.

## IV. CONCLUSION

The time has come to relax both the duopoly and national ownership rules. Television stations face daunting competition from large vertically integrated cable monopolies, DBS, MMDS and the local telephone companies. In the face of such multichannel competition, the Commission can no longer justify limiting television stations to one channel per market. At the national level, increasing the audience reach cap to 35% will help group owners compete.

Respectfully submitted,

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